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Recipe for Success

Marshack Hays brings sophistication and innovation to complicated business problems.

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IRVINE — When the owner of a skilled nursing home declared Chapter 7 bankruptcy in June, attorneys at Marshack Hays LLP embraced a role that's established them as a top firm for complex problems: They turned their attention to the residents.

The 110 patients, many bedridden, faced an uncertain future that jeopardized their already shaky health and complicated an already messy financial undoing, and firm co-founder and longtime U.S. Trustee Richard A. Marshack felt it his duty to make sure they were OK.

"The owner basically pulled the pin on a grenade and dropped it into a Chapter 7, walked away and said it's not my problem," said firm co-founder D. Edward Hays. "We weren't going to allow those patients' care to be diminished."

The case was part of Marshack's position as one of five U.S. Bankruptcy Court trustees in Orange County, a position he's held for 35 years. His duties typically involve selling assets to pay creditors, but the bankruptcy of Cypress Gardens Community Care in the San Bernardino County city of Highland called for a different approach to ensure the best



Courtesy Marshack Hays LLP

From left, partners David A. Wood, D. Edward Hays, Richard A. Marshack and Chad V. Haes

possible business outcome. With the support of the U.S. Department of Justice and U.S. Bankruptcy Judge Catherine E. Bauer, "We said our primary and only goal here is to keep this facility operating," Marshack said in an interview at the firm's headquarters in Irvine.

They were in and out of the case in three months, hiring a company to manage the place while securing a sale to the property owner that kept everything in place for residents.

It's an example of an approach to sophisticated problems that capitalizes on not only legal skills, but a keen business sense and knack for innovation.

Along with Marshack's trustee work, the firm handles wide-ranging bankruptcies that include intricate financial dealings and substantial property holdings. Its caseload includes a real estate practice that complements the bankruptcy arm, and its founders pride themselves on creative, savvy solutions to cases that go beyond run-of-the-mill financial ruins.

"The bottom line is if you have a complicated issue that doesn't necessarily have an easy answer, that's the kind of thing that we take and that we work on and figure out a way to get from Point A to Point B," Hays said.

Of Counsel Kristine A. Thagard joined in 2011 with 30 years of real estate experience.

"In bankruptcy, you get to do both transactional and litigation on the same case, which is not typical in any other practice area. And so it kind of puts together all of my experiences into one thing," Thagard said.

Invoking his well-received wry sense of humor, Marshack calls the firm "a halfway house for former bankruptcy judges' law clerks." Attorneys have worked for nine current or former U.S. Bankruptcy judges, which Marshack said provides "a true sense of what the court

needs to see in order for us to achieve results for our clients.”

Formed in 2009, the firm now has 18 employees, including nine lawyers and five paralegals. Chad V. Haes and David A. Wood were elevated to profit partners last year.

Steven J. Katzman of Bie-nert | Katzman PC said Wood “has really become a prominent person in the bankruptcy community” in the six years he’s been with the firm.

Katzman said the firm has a culture that steers from the my-way-or-the-highway operations that focus only on name partners.

“The boutiques that really succeed are the ones that understand that’s not the recipe for success,” Katzman said. “You have to grow and let people have their own identities. I think that’s what Richard and Ed have done.”

Starting in 1993, Marshack built what was then Marshack Shulman Hodges & Bastian LLP into an established bankruptcy boutique. He sold his equity interest in 2000 but served as of counsel for nine more years until his wife told him he was bored and needed a challenge.

At the same time, Hays was 17 years at what was then Rus, Miliband & Smith, APC, now an office of the international firm Brown Rudnick LLP. It was a bankruptcy litigation firm, too, filled with what

Hays describes as “brilliant, ethical people and good camaraderie.” The firm also knew Marshack well; it represented him in several issues as a trustee, and the first published case Hays had included Marshack as a client. They struck a tentative deal for their new venture over lunch.

“Richard said, ‘You know,

‘The bottom line is if you have a complicated issue that doesn’t necessarily have an easy answer, that’s the kind of thing that we take.’

- D. Edward Hays, firm co-founder

I’m kind of looking to form a new firm or retire. I’ve made a lot of money, and I’ve worked with people, but the one thing I really have never done was work at a firm that was known as being top-notch litigators with super smart people,” Hays said. “Let’s partner up, and let’s go build something exciting that’s known for being very smart, very top-notch litigators working on sophisticated issues that push the law.”

A recent case epitomized that goal with Marshack Hays attorneys securing \$3.5 million that had been stuffed in an off-shore account in the Cook Islands. They did it by having the debtor, Jana W. Olson, jailed for a year for contempt then suing her asset protection

planning attorney, Jeffrey R. Matsen of Bohm Wildish & Matsen, LLP, for aiding and abetting. Matsen helped them determine the proper terms for the release of the money, which included agreements that needed to be signed by Olson.

Olson signed them in court in July 2017 “because she

didn’t think the money would never come back,” Hays said. She realized she’d lost the cash when she was released from jail on the contempt charge a couple days later, “and she was mad as hell because she had spent 16 months in jail and didn’t get the money,” Hays said. *In re Jana W. Olson*, 15BK-12496 (Bankr. C.D. Cal., filed May 14, 2015).

“Everybody will tell you you’re not getting money out of the Cook Islands, but you find the right pressure points, and maybe you can,” Hays continued.

Another U.S. trustee, Jeffrey I. Golden of Weiland Golden Goodrich LLP, said he and his partners “find ourselves in

many of the same case” with Marshack Hays attorneys.

“I have found the firm’s attorneys to be creative, constructive and a pleasure to work with,” Golden said in an email. “I very much enjoy working with them, and I am confident they will continue to succeed.”

Currently, Marshack is the trustee assigned to indicted attorney Michael J. Avenatti’s bankrupt law firm, Eagan Avenatti LLP. He’s also representing a class of 6,000 wild-fire victims in Pacific Gas & Electric Co.’s bankruptcy in San Francisco.

Litigator Gerald B. Singleton of the Singleton Law Firm also represents the victims, and he said Marshack Hays’ expertise has been invaluable for a tangled case with “a lot of novel legal issues.”

“They’ve done an excellent job with helping us navigate the bankruptcy process,” Singleton said. “For me, it was like learning a new language.”

The firm’s vision for the future involves more of the same, which means a lot of new.

“Everything is always a little bit different,” Hays said. “There’s always a little bit of a different nuance and there’s always some different challenge to get from Point A to Point B.”

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